IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 35204 of 2007(N)

AGAINST THE ORDER DATED 29/10/2007 IN IA 1634/2007 IN OS.221/2000 of SUB COURT, MAVELIKKARA

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PETITIONER:

KERALA STATE CO-OPERATIVE CONSUMER FEDERATION, REP. BY ITS MANAGING DIRECTOR, GANDHI NAGAR, ERNAKULAM.

BY ADV. SMT.A.SALINI LAL

RESPONDENT: PLAINTIFF:

R. VASU, S/O. RAMAN, PALAKKULANGARA MADOM, THULAMPARAMBU THEKKKUM MURI, HARIPAD, ALAPPUZHA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

W.P.(C)NO.35204 of 2007 - N

Dated this the 28th day of November, 2007.

JUDGMENT

This writ petition is preferred against the order of the Subordinate Judge's Court, Mavelikara in I.A.No.1634/2007 in O.S.No.221/2000. The plaintiff in the suit, during the fag end of the trial, moved an application for amendment, whereby he wanted to incorporate pleadings regarding damages for use and occupation from the defendant. The principal contention of the defendant is that it has not taken the alleged room on rent and therefore, the question of eviction or payment does not arise. The suit is of the year 2000 and according to the plaintiff, he got the property only on 15..3.2002 and, therefore, he is entitled for damages for use and occupation at the rate of Rs.9,432/=. On the other hand, the defendant would contend that they have not been in possession of the premises at all and the key has been offered to be handed over even before institution of the suit and therefore, the question of payment of damages for use and occupation does not arise. Merits and demerits of the contention of that nature is not

expected to be considered by this Court at the stage of allowing or dismissing the amendment application The learned counsel would submit that amendment sought for has been made after the trial was started and, therefore, under the provisions of the Civil Procedure Code unless there are warranting reasons, the court cannot entertain it. When an application for amendment is filed, the court has to satisfy that it is made bonafide and it is really necessary for resolving controversy between the parties and for avoiding multiplicity of proceedings. So far as this case is concerned there is a total denial and therefore pleadings depend upon the finding whether it is a tenant or not and secondly if it is found that it is occupied as a tenant whether there had been deliberate delay in handing over the key, which has resulted in any damages to the plaintiff. These are all matters which the court has to consider. Actually it is a matter which requires consideration for the reason that claim for damages for use and occupation is co-related in a suit for eviction and the party shall not be driven to another suit, so that multiplicity of proceedings can be averted. It is true that there is delay in filing the amendment application. But, I have stated earlier that as it is really necessary for resolving controversy between the parties and as there are bonafides in the

application and as it will not change the character of the suit and take away any valid plea of the defendant, I find that the court below was perfectly justified in allowing the application for amendment. Therefore, I am not inclined to interfere with the said order. Needless to say that the court has to permit the defendant to file additional written statement and if necessary, frame additional issues and permit both the parties to adduce evidence in support of the same on that issue and thereafter dispose of the entire matter in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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